

DEVITT SPELLMAN BARRETT, LLP

ATTORNEYS AND COUNSELLORS AT LAW

50 Route 111

Smithtown, New York 11787

Phone: (631) 724-8833

Fax: (631) 724-8010

Email: info@devittspellmanlaw.com
(direct mail to Smithtown address)

WILLIAM J. BARRETT
KEVIN M. SPELLMAN
JOHN M. DENBY
DAVID S. PALLAI
DAVID H. ARNTSEN
KENNETH M. SEIDELL
NICHOLAS M. BRINO
STEPHAN D. TRACE
KELLY E. WRIGHT
JOHN M. SHIELDS

FRANCIS J. TIERNEY
ANNE C. LEAHEY
THEODORE D. SKLAR

Retired
JOSEPH P. DEVITT

CHARLES W. BORGHARDT
JOSHUA S. SHTEIERMAN
DANIEL L. ADAMS
JESSE D. RUTTER
JUSTIN M. ROWE
MAGGIE O'CONNOR
KEVIN J. STIMPFL
STEPHEN G. RICKERSHAUSER

Of Counsel
THOMAS J. SPELLMAN, JR.
JELTJE de JONG
STEFANIE AFFRONTI
DEBORAH C. ZACHARY
EILEEN M. O'NEILL
ROGER E. SIEGEL
EMMANUEL KOSSARIS
GEORGE FREITAG
JOHN T. TRACY

March 21, 2017

Hon. Leonard D. Wexler,
Senior United States District Court
Judge 100 Federal Plaza
P.O. Box 9014
Central Islip, NY 11722-9014

Re: Razzano v. Remsenberg-Speonk, UFSD
11-CV-02920

Dear Judge Wexler:

We are the attorneys for the defendant school district in the above referenced matter. This letter is written in response to the plaintiff's request that this Court reconsider the dismissal that was issued on February 16, 2017 after a conference before Your Honor. Plaintiff, by letter dated March 14, 2017 advises that she is discharging her current attorney and wishes to pursue this matter. She has also filed a notice of appeal.

By way of background, plaintiff initiated the instant suit alleging that the defendants violated the Americans with Disabilities Act ("ADA") when they reduced her from position at the defendant school district from full-time to part-time. Plaintiff claims that she is disabled and the district's decision was based on impermissible consideration of her disability. She also alleged that the District had retaliated against her on the basis of her disability and that such retaliation was continuous in nature. Ultimately, the District initiated disciplinary charges against the plaintiff pursuant to Education Law 3020-a. On May 31, 2013, an independent arbiter sustained these charges and the District ultimately terminated the plaintiff. .

A trial was originally scheduled for June 10, 2013 and jury selection was held with the trial scheduled to commence on June 25, 2013. However, on June 12, 2013, plaintiff moved this Court for a stay pending the determination of plaintiff's appeal of the 3020-a decision. [DE#22].

Defendants opposed this request. [DE#23]. Plaintiff's counsel advised that if her appeal was not successful, the instant matter would be withdrawn. On June 13, 2013, this Court granted plaintiff's motion and directed the Clerk of the Court to close the matter. Additionally, the Court ordered that plaintiff provide a status report to the Court within 3 months.

On November 9, 2016, the Appellate Division, Second Department issued a decision on plaintiff's appeal of the 3020-a determination and in it upheld the arbiter's decision terminating plaintiff's employment. This Order was served with Notice of Entry upon the plaintiffs on November 10, 2016. More than thirty (30) days have elapsed since such service and plaintiff did not appeal the Second Department's decision. This decision is therefore final.

A conference was held on February 16, 2017 and following counsel's statements regarding lack of communication with the plaintiff, this Court dismissed the case for failure to prosecute. Plaintiff now denies that she has been uncooperative and requests that the case be reopened.

Defendant respectfully requests that this Court deny the plaintiff's request, inasmuch as this matter has been dormant for almost four years. In the event that this Court were to grant the plaintiff's request, defendant respectfully requests a conference for the purpose of scheduling a motion for summary judgment. Defendant will argue that the plaintiff will be precluded from going forward in this case based upon the doctrines of res judicata and collateral estoppel.

Thank you for your attentions and courtesies.

Respectfully Submitted,

DEVITT SPELLMAN BARRETT, LLP

/S/

Jeltje deJong

Cc: Scott Michael Mishkin, Esq.
Attorney for plaintiff (VIA ECF)

Janice Razzano
3 Normandie Lane
East Moriches, NY 11940